

AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE MAY 9, 2005

AMENDED IN SENATE MARCH 17, 2005

SENATE BILL

No. 163

Introduced by Senator Scott
(Coauthor: Senator Kuehl)

February 8, 2005

An act to add Section 10295.2 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Scott. Public contracts.

Existing law establishes various requirements applicable to entities that want to contract with the state.

This bill would require a pharmaceutical company entering into a contract with an agency of the state to disclose the percentage of its national operating budget that is expended on marketing purposes, and the percentage of its national operating budget expended on research and development, with specified exceptions. The bill would prohibit a state department or agency from entering into a contract with a pharmaceutical company in the absence of that disclosure. This bill would ~~provide that specific information disclosed by~~ *authorize a pharmaceutical company to request that confidential or proprietary information so disclosed* be held confidential and would make findings regarding the interest protected by keeping ~~specific~~ *this* information confidential.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10295.2 is added to the Public Contract Code, to read:

10295.2. (a) A pharmaceutical company entering into a contract with a state department or agency shall disclose to the Legislature and to the chief of the department or agency secretary, the percentage of its national operating budget that is expended for marketing purposes, and the percentage of its national operating budget that is expended for research and development purposes. No state department or agency may enter into a contract with a pharmaceutical company in the absence of that disclosure. This disclosure shall be made 30 days prior to the effective date of the contract and annually thereafter. The following marketing expenses are not subject to the requirements of this section:

(1) Expenses of twenty-five dollars (\$25) or less.

(2) Reasonable compensation and reimbursement for expenses in connection with a bona fide clinical trial of a new vaccine, therapy, or treatment.

(3) Scholarships and reimbursement of expenses for attending a significant educational, scientific, or policymaking conference or seminar of a national, regional, specialty medical, or other professional association if the recipient of the scholarship is chosen by the association sponsoring the conference or seminar.

(4) Drug samples given to physicians and health care professionals intended for free distribution to patients.

(b) For the purposes of this section, the following definitions apply:

(1) "Marketing" means activities associated with advertising, marketing, and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone in connection with detailing or promotional activities performed by the company directly, or through its pharmaceutical marketers.

(2) "Pharmaceutical company" means:

(A) An entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of dangerous drugs, either directly or indirectly, by extraction from substances of natural origin or independently by means of

1 chemical synthesis or by a combination of extraction and
2 chemical synthesis.

3 (B) An entity engaged in the packaging, repackaging, labeling,
4 relabeling, or distribution of dangerous drugs.

5 (C) A person who engages in pharmaceutical detailing,
6 promotional activities, or other marketing of a dangerous ~~drugs~~
7 *drug* in this state on behalf of a pharmaceutical company.

8 (D) “Pharmaceutical company” does not include a licensed
9 pharmacist.

10 (3) *“Research and development” means any activity that is*
11 *undertaken for the purpose of discovering information that is*
12 *technological in nature, the application of which is intended to*
13 *be useful in developing a new or improved business component,*
14 *including any product, process, computer software, technique,*
15 *formula, or invention that is to be held for sale, lease, or license,*
16 *or for use in the company’s trade or business. The activity shall*
17 *constitute elements of a process of experimentation and shall be*
18 *conducted for the purpose of relating to a new or improved*
19 *function, performance, reliability, or quality.*

20 (c) (1) Notwithstanding any other provision of law, any
21 person required to present information to the Legislature and
22 contracting department *or agency* pursuant to this section may
23 request that ~~specific~~ *confidential or proprietary* information be
24 held in confidence. The Legislature and ~~contracting department~~
25 ~~shall grant the request in any of the following circumstances:~~
26 *contracting department or agency shall grant the request if the*
27 *information is exempt from disclosure under the California*
28 *Public Records Act, Chapter 3.5 (commencing with Section*
29 *6250) of Division 7 of Title 1 of the Government Code.*

30 ~~(A) The information is exempt from disclosure under the~~
31 ~~California Public Records Act, Chapter 3.5 (commencing with~~
32 ~~Section 6250) of Division 7 of Title 1 of the Government Code.~~

33 ~~(B) On the facts of the particular case, the public interest~~
34 ~~served by not disclosing the information clearly outweighs the~~
35 ~~public interest served by disclosure of the information. If it is~~
36 ~~determined that the disclosure of the information will result in an~~
37 ~~unfair competitive disadvantage to the person supplying the~~
38 ~~information, then the information shall not be disclosed.~~

39 (2) The contracting department *or agency* may, by regulation,
40 designate certain categories of information as confidential and

1 thereby remove the obligation to request confidentiality for that
2 information. *Information that has already been made available to*
3 *the public through another public entity shall not be designated*
4 *as confidential.*

5 (3) *The Legislature and contracting department or agency*
6 *shall not grant the request if the information has already been*
7 *made available to the public through another public entity.*

8 (4) *The contracting department or agency shall disclose*
9 *information obtained pursuant to this section that has not been*
10 *designated as confidential on its Web site to facilitate greater*
11 *public disclosure.*

12 SEC. 2. The Legislature finds and declares that Section 1 of
13 this act, which adds Section 10295.2 to the Public Contract Code,
14 imposes a limitation on the public's right of access to the
15 meetings of public bodies or the writings of public officials and
16 agencies within the meaning of Section 3 of Article I of the
17 California Constitution. Pursuant to that constitutional provision,
18 the Legislature makes the following findings to demonstrate the
19 interest protected by this limitation and the need for protecting
20 that interest:

21 Information provided under Section 10295.2 may contain
22 sensitive business information, the disclosure of which will result
23 in an unfair competitive disadvantage to the person supplying the
24 information.